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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,163	03/08/2001	Christopher Keith	0505-4015	1129
24259	7590	01/12/2005	EXAMINER	
BRENDA POMERANCE LAW OFFICE OF BRENDA POMERANCE 260 WEST 52 STREET SUITE 27B NEW YORK, NY 10019			GRAHAM, CLEMENT B	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/802,163	KEITH, CHRISTOPHER
	<b>Examiner</b>	<b>Art Unit</b>
	Clement B Graham	3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 October 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. Claims 1-7 remained pending.

### **Claim Rejections - 35 USC § 101**

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-3, 5-7, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, claims 2-3, 5-7, do not recite any structure or functionality to suggest that a computer performs the recited claims. Thus, claims 2-3, 5-7, are rejected as being directed to non-statutory subject matter.

### **Claim Rejections - 35 USC § 102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only

if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, are rejected under 35 U.S.C. 102(e) as being anticipated by Madoff et al (Hereinafter Madoff U.S Publication 2001/0044767).

As per claim 1, Madoff discloses a method of facilitating trading, comprising: satisfying a condition at a market.(“i. e, market price” see column 1 lines 0006-0007”) and automatically at a market participant’s computer(i. e, “displays order”) receiving a new contra-side best market price in advance of other market participants while the condition at the market is satisfied.(see column 6 paragraph 0055-0057 and 062).

As per claim 2, , Madoff discloses, wherein the satisfying and receiving are performed by a trading process.(see column 6 paragraph 0055-0057 and 062).

As per claim 3, Madoff discloses, wherein the condition is providing the best market price for a side of the market. (see column 6 paragraph 0055-0057 and 062).

#### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 4-5 and 7, are rejected under 35 U.S.C. 102(a) as being anticipated by Streamer free real time stock quote service (Hereinafter Streamer, and www.datek.com, www.findarticles.com/m4PRN/1999/NOV.

As per claim 4, Streamer discloses a method of facilitating trading, comprising: automatically via a computer notifying a selected party of a new contra-side best market price, and automatically via a computer notifying other market participants of the new contra-side best market price after a predetermined time from when the selected party was notified of the new contra side best price.(see page 1 and 2).

As per claim 7, Streamer discloses, further comprising checking a recently posted price to determine if the recently posted price is a new contra-side best market price. (see page 1 and 2).

As per claim 5, Streamer discloses, wherein the selected party is a provider of a best market price for a side of the market. (see page 1 and 2).

6. Claim 6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Streamer free real time stock quote service (Hereinafter Streamer, and www.datek.com, www.findarticles.com/m4PRN/1999/NOV.

As per claim 6, Streamer fail to explicitly teach further comprising checking the identity of the selected party before providing the best market price to the selected party.

However Streamer discloses that registered users being provided access to the system(see page 1).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made that the teachings of Streamer would have consisted of a feature for identifying its registered from unregistered users in order to authenticate any user attempting to access the system.

As per claim 7, Streamer discloses, further comprising checking a recently posted price to determine if the recently posted price is a new contra-side best market price. (see page 1 and 2).

#### Conclusion

#### Response to Arguments

5. Applicant's arguments files on 10/12/04 have been fully considered but they are moot in view of new grounds of rejections.

6. In response to Applicant's arguments pertaining to Madoff and streamer.

7. In response to Applicant's arguments that references fail to teach or suggest "claimed receiving, at a market participant's computer, a new contra-side best market price in advance of other market participants while the condition at the market is satisfied" these limitations are addressed by Madoff as follows, satisfying a condition at a market, and automatically at a market participant's computer receiving a new contra-

side best market price in advance of other market participants while the condition at the market is satisfied. see column 6 paragraph 0055-0057 and 062.

It is inherently clear that the teachings of Madoff illustrates participant's can receive a new contra-side best market price in advance of other market participants while the condition at the market is satisfied.

8. In response to Applicant's arguments that references fail to teach or suggest" notifying other market participants of a new contra-side best market price after a predetermined time from when a selected party was notified of the new contra-side best market price" this limitation is addressed as follows Streamer discloses automatically via a computer notifying a selected party of a new contra-side best market price, and automatically via a computer notifying other market participants of the new contra-side best market price after a predetermined time from when the selected party was notified of the new contra side best price. see page 1 and 2.

It is inherently clear that the teachings of Streamer illustrates notifying other market participants of a new contra-side best market price after a predetermined time from when a selected party was notified of the new contra-side best market price.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 703-308-0505. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

January 03, 2005

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
*All 3628*